

ARKANSAS SUPREME COURT

No. 06-335

DAVID PRESTON PARDUE
Appellant

v.

LARRY NORRIS, DIRECTOR,
ARKANSAS DEPARTMENT OF
CORRECTION
Appellee

Opinion Delivered January 18, 2007

PRO SE APPEAL FROM THE CIRCUIT
COURT OF JEFFERSON COUNTY, CV
2005-897, HON. ROBERT HOLDEN
WYATT, JR., JUDGE

AFFIRMED.

PER CURIAM

In 2003, David Preston Pardue entered a plea of guilty to two counts of aggravated assault and one count of aggravated robbery. He received a sentence of 144 months' incarceration for each assault charge, and 132 months' incarceration for the robbery charge. The sentences for each count of the assault charges were to be served consecutively, and the sentence for the robbery charge was to be served concurrently with the sentences for assault. Subsequently, appellant timely filed in the trial court a *pro se* petition for postconviction relief pursuant to Ark. R. Crim. P. 37.1. The trial court denied the petition and this court affirmed. *Pardue v. State*, 363 Ark. 567, ___ S.W.3d ___ (2005) (*per curiam*).

In 2005, appellant, who is incarcerated in Jefferson County, filed in circuit court a petition for writ of habeas corpus. The trial court denied the petition without a hearing, and appellant, proceeding *pro se*, has lodged an appeal here from that order.

We do not reverse a denial of postconviction relief unless the trial court's findings are clearly

erroneous or clearly against the preponderance of the evidence. *Greene v. State*, 356 Ark. 59, 146 S.W.3d 871 (2004). A finding is clearly erroneous when, although there is evidence to support it, the appellate court after reviewing the entire evidence is left with the definite and firm conviction that a mistake has been committed. *Flores v. State*, 350 Ark. 198, 85 S.W.3d 896 (2002).

The principal issue in a habeas corpus proceeding is whether the petitioner is detained without lawful authority. Ark. Code Ann. § 16-112-103 (Repl. 2006); *Fullerton v. McCord*, 339 Ark. 45, 2 S.W.3d 775 (1999). A writ of habeas corpus is proper when a judgment of conviction is invalid on its face or when a circuit court lacked jurisdiction over the cause. *Davis v. Reed*, 316 Ark. 575, 873 S.W.2d 524 (1994).

Unless a petitioner can show that the trial court lacked jurisdiction or that the commitment was invalid on its face, there is no basis for a finding that a writ of habeas corpus should issue. *Friend v. Norris*, 364 Ark. 315, ___ S.W.3d ___ (Dec. 1, 2005) (*per curiam*). The petitioner must plead either the facial invalidity or the lack of jurisdiction and make a “showing, by affidavit or other evidence, [of] probable cause to believe” he is illegally detained. Section 16-112-103(a). *See also Mackey v. Lockhart*, 307 Ark. 321, 819 S.W.2d 702 (1991).

Here, appellant contended in the petition for writ of habeas corpus and in his first point on appeal that the information charging him with aggravated robbery did not contain the statutory essential elements of the crime. Specifically, he postulated that the information was required to state that appellant purposely committed a theft and that he resisted apprehension immediately after the act. As a result, he argued, the trial court exceeded its subject matter jurisdiction, causing his sentencing and subsequent incarceration to be defective and ultimately void.

It is well settled that the subject-matter jurisdiction of the trial court is not implicated when

the sufficiency of the information is questioned. Even if an information is insufficient that fact does not deprive a court of subject-matter jurisdiction. *Sawyer v. State*, 327 Ark. 421, 935 S.W.2d 843 (1997). In the instant matter, the amended information charging appellant with aggravated robbery named appellant, set out the offense charged, provided the statute under which the charge was brought, specified the county where the offense was committed, and stated the facts asserted to constitute the offense. We have held that an information is sufficient if these components are contained in it. *Sawyer, supra*, citing *Beard v. State*, 269 Ark. 16, 698 S.W. 2 72 (1980).

In *Beard*, “knowingly” was omitted in the information; however, the information did include the items listed above. We recognized that if an information set forth the principal language of the statute and the asserted facts constituting the offense, then the information met the required standard. Citing *Workman v. State*, 267 Ark. 103, 589 S.W.2d 20 (1979), we affirmed the rule that “an information is not defective if it sufficiently apprises the individual of the specific crime with which he is charged to the extent necessary to enable him to prepare his defense.” *Beard*, 269 Ark. at 17, 698 S.W.2d at 74.

We also noted in *Beard* that the appellant therein failed to seek additional details of the charge by filing a bill of particulars under Ark. Code Ann. §16-85-301 (Repl. 2005) and did not raise the issue of a defective information until after his conviction. The same is true in the present matter: appellant did not claim prior to the time he entered his plea of guilty in 2003 that the information was inadequate and thus the trial court lacked subject-matter jurisdiction. Instead, he raised this issue for the first time in a petition seeking postconviction relief. A habeas corpus proceeding does not afford a prisoner an opportunity to retry his case and is not a substitute for direct appeal or a timely petition for postconviction relief. *Meny v. Norris*, 340 Ark. 418, 420, 13 S.W.3d 143, 144 (2000)

(*per curiam*). We cannot say that the trial court erred in denying appellant's petition for writ of habeas corpus based upon the language of the information filed by the State.

In appellant's second point on appeal, he maintains that the trial court erred by "concluding that the scope of the writ of habeas corpus is limited to claims that a petitioner must show that the judgment and commitment order is invalid on its face or that the trial court lacked jurisdiction." Appellant apparently is attacking the nature and extent of petitions for writs of habeas corpus. However, we will not consider an argument raised for the first time on appeal. *Ayers v. State*, 334 Ark. 258, 975 S.W.2d 88 (1998). Issues raised, including constitutional issues, must be presented to the trial court to preserve them for appeal. *Standridge v. State*, 357 Ark. 105, 161 S.W.3d 815 (2004). Appellant is likewise prohibited from raising this new claim for the first time on appeal. As a result, this court cannot address appellant's claim related to the limits of the habeas corpus statutes.

Because none of the issues raised in appellant's petition for writ of habeas corpus was sufficient to demonstrate that the trial court lacked jurisdiction or that the judgment of conviction was invalid on its face, appellant failed to demonstrate that a writ of habeas corpus should be issued.

Affirmed.